

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 491**

### **Introduced by Assembly Member Diaz**

(Principal coauthor: Senator Alarcon)

(*Coauthor: Assembly Member Cohn*)

February 14, 2003

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An act to add Article 3 (commencing with Section 89730) to Chapter 6 of Part 55 of the Education Code, and to amend Sections 10295 and ~~10430~~, *10430*, and *12100.5* of the Public Contract Code, relating to the California State University.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 491, as amended, Diaz. California State University: information technology projects.

(1) Existing law establishes the California State University and its various campuses under the administration of the Trustees of the California State University.

This bill would enact a comprehensive statutory scheme relating to information technology projects of the university.

The bill would require any information technology project of the university that exceeds ~~\$100,000~~ *\$250,000* in direct or related costs to receive independent *project* oversight and prior approval from the Director of Finance *and project implementation oversight from the Department of General Services or another agency with oversight authority*.

The bill would ~~require the trustees to establish quantitative measures of increased business process efficiencies for information technology projects. The bill would~~ generally require the university to take systematic measures to analyze and justify the costs related to information technology projects.

The bill would require ~~that, prior to issuing a request for proposal for a contract or prior to entering into a contract which outsources any information technology function, the university provide an analysis of relative merits and projected costs. The bill would~~ require the trustees to disclose, prior to entering into a contract with any private vendor, any donations to the university, or to any of the campuses or auxiliary organizations of the university, made by that vendor for up to one year before the date on which the contract is to be executed.

The bill would require the university to take prescribed actions to safeguard electronic records that contain confidential student information.

(2) Existing law, with specified exceptions, provides that all contracts entered into by any state agency for the hiring or purchase of goods and services, as defined, are void unless approved by the Department of General Services. Existing law exempts the California State University, as well as transactions entered into by the trustees, or pursuant to the California State University Contract Law, from this requirement.

This bill would delete this exemption, insofar as it applies to information technology projects of the California State University that are within the scope of the bill, thereby subjecting the university to this requirement with respect to those projects.

(3) Existing law, with specified exemptions, including the acquisition of information technology goods and services, regulates the procurement of materials, supplies, equipment, and services by state agencies. These provisions do not apply to the Regents of the University of California or to the Trustees of the California State University.

The bill would delete the provision that exempts the Trustees of the California State University from these requirements, insofar as it applies to information technology projects of the California State University that are within the scope of the bill, thereby subjecting the trustees to these requirements with respect to these projects.

(4) *Existing law generally requires that all state agency contracts for the acquisition of information technology goods or services, whether by lease or purchase, be made by or under the supervision of the*



*Department of General Services. Existing law exempts the Trustees of the California State University, as well as the governing bodies of the other segments of public postsecondary education, from this supervision, but also requires the trustees to develop policies and procedures, to be maintained in the state university administrative manual, that further the pertinent legislative policies for contracting, but that are without the involvement of the Director of Finance, the Director of General Services, the Department of Finance, or the Department of General Services.*

*This bill would instead require the trustees to develop these policies and procedures in conjunction with the Director of Finance, the Director of General Services, the Department of Finance, or the Department of General Services.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The Legislature finds and declares all of the
- 2     following:
- 3     (a) The California State University (CSU) failed to conduct a
- 4     comprehensive systemwide cost/benefit or needs analysis prior to
- 5     implementing the multimillion dollar Common Management
- 6     System (CMS) computer data project.
- 7     (b) CSU failed to both establish a business plan or a systemwide
- 8     funding plan for CMS.
- 9     (c) CSU procured CMS-related vendor services using
- 10    sole-source contracts.
- 11    (d) CSU is funding the six hundred sixty-two million dollar
- 12    (\$662,000,000) CMS project with resources that could otherwise
- 13    be devoted to supporting classroom instruction, student services,
- 14    and libraries.
- 15    (e) CSU's flexible budget framework exempts it from many
- 16    legislative oversight mechanisms, and the CMS project was not
- 17    subject to the same legislative scrutiny other state information
- 18    technology projects undergo.
- 19    (f) CSU's flexible budgeting environment also allows it to
- 20    make expenditures that may be contrary to priorities established
- 21    by the Legislature.



~~(g) Essential core educational programs needed for student success and that are required to fulfill the university's primary education mission to provide instruction are being sacrificed for technology projects lacking legislative oversight and accountability measures.~~

~~(h) CSU has failed to establish guidelines and technology safeguards to ensure that the personal and confidential information of students and employees is provided the greatest possible protection from potential "identity theft" or misuse by individuals who are not authorized to have access to that information.~~

SEC. 2. Article 3 (commencing with Section 89730) is added to Chapter 6 of Part 55 of the Education Code, to read:

Article 3. Information Technology

89730. (a) It is the intent of the Legislature to ensure that future information technology projects of the university are appropriate expenditures of state resources.

(b) This article applies to, but is not necessarily limited to, any information technology project of the university that exceeds ~~one hundred thousand dollars (\$100,000)~~ *two hundred fifty thousand dollars (\$250,000)* in direct or related costs. An information technology project to which *this* article applies shall receive independent *project* oversight and prior approval from the ~~Director of Finance~~.

~~(c) The trustees shall adopt policies and procedures that require a feasibility study before the acquisition or implementation of any information technology project to which this article applies. A feasibility study conducted pursuant to this section shall include, but not necessarily be limited to, both of the following:~~

~~(1) Director of Finance and project implementation oversight from the Department of General Services or from another state agency that is granted oversight authority by statute.~~

(c) For the purposes of this section, the trustees, in conjunction with the Department of General Services and the Department of Finance, shall develop and adopt both of the following as regulations:

(1) Provision for a feasibility study that includes, but is not necessarily limited to, all of the following:

1 (A) A clearly defined statement of the business problems or  
2 opportunities being addressed by the proposed project.

3 ~~(2)~~

4 (B) An economic analysis of the cost of the proposed project,  
5 as compared with the costs of the current method of operation.

6 ~~89730.3.—To measure the benefits achieved through common  
7 management and business practices, the trustees shall establish  
8 quantitative measures of increased business process efficiencies  
9 for information technology projects, in addition to any qualitative  
10 factors that are assessed. At a minimum, the measures adopted  
11 pursuant to this section shall identify the increased productivity of~~

12 (C) *An identified specific functionality that is necessary to  
13 achieve the documented needs of the university as expressed in the  
14 information technology projects charter.*

15 (D) *Identification of the increased productivity of staff and  
16 reduced operational costs that would be attributable to the project.*

17 ~~89730.5.—The chancellor shall define the scope and associated  
18 costs of information technology projects by identifying the  
19 specific functionality that is necessary to achieve the documented  
20 needs of the university as expressed in the information technology  
21 projects charter.~~

22 ~~89731.—Prior to issuing a request for proposal for a contract or  
23 prior to entering into a contract which outsources any information  
24 technology function, the university shall undertake a self-study  
25 and cost justification analysis to determine all of the following:~~

26 ~~(a)~~

27 (2) *Provision for a cost benefit analysis that includes, but is not  
28 necessarily limited to, all of the following:*

29 (A) The relative merits of the project.

30 ~~(b) Any projected cost or salary savings.~~

31 (B) *Any projected cost, including in-kind costs, upgrades,  
32 integrated costs, maintenance costs, and savings.*

33 ~~(c)~~

34 (C) Whether the new outsourcing project could be done by  
35 current technical staff if *they are* provided with sufficient  
36 additional training.

37 (D) *All identified funding sources for the project, including  
38 campus costs.*

39 ~~89731.3.—To ensure that it adequately monitors and controls  
40 project costs, the trustees shall take both of the following actions:~~

~~(a) Establish a mechanism to collect and compile information technology project cost information, including campus costs. The trustees shall determine what level of quarterly cost information they need from the campuses in order to monitor the project. The trustees shall collect comprehensive cost information annually, including in-kind costs, upgrades, maintenance, and integration costs.~~

~~(b) Compare the collected project costs against the approved information technology project budget and publish this information in a quarterly status report.~~

~~89731.7. The trustees shall do both of the following:~~

~~(a) Examine the costs associated with the campuses' plans to add functionality elements to increase functionality beyond this defined scope.~~

~~(b) Establish a systemwide funding plan for information technology projects that includes campus finances, if these finances are being used, either in whole or in part. Before commencing any information technology project, the trustees shall ensure that there is a funding plan in place that covers the entire scope of the project.~~

~~89732. To ensure that the university minimizes the costs and time to implement and maintain information technology software, the chancellor shall reassess the design of information technology projects, and evaluate the economies that can be achieved by reducing the number of separate information technology databases throughout the university that currently must be tested separately when campuses implement software revisions that reflect modifications and upgrades.~~

~~89732.7. To ensure that it provides ready access to current, accurate, and complete administrative information and the means to use this information effectively, as well as to establish standards to share information for common reporting purposes, the chancellor shall determine how the university could improve the design information technology projects in order to report systemwide information. Additionally, the chancellor shall establish a minimum level of functionality that all campuses shall implement in order to facilitate this reporting.~~

~~89733. To ensure that it adequately addresses any information technology project quality and information security, the university shall establish a quality management plan and continue its efforts~~

1 ~~to establish an effective quality assurance function for information~~  
2 ~~technology projects.~~

3 ~~89733.3. When procuring information technology systems or~~  
4 ~~software, the trustees shall evaluate the specific business processes~~  
5 ~~against vendor products before procurement, then select the~~  
6 ~~vendors that best accommodate the specific needs of the~~  
7 ~~university.~~

8 ~~89733.5. The chancellor shall track the actual hours spent to~~  
9 ~~develop modifications to information technology software. The~~  
10 ~~chancellor shall consider this information when estimating the~~  
11 ~~costs and time associated with developing and applying future~~  
12 ~~modifications to new versions of the vendor software, and when~~  
13 ~~evaluating the associated maintenance costs in reapplying, testing,~~  
14 ~~implementing, and maintaining its current and future~~  
15 ~~modifications.~~

16 ~~89733.7. To ensure that they use recommended practices in~~  
17 ~~procurement, the trustees shall plan project procurements to share~~  
18 ~~risks with vendors and consultants, such as by allowing them to~~  
19 ~~propose their solutions and by structuring contracts to protect the~~  
20 ~~university's documented financial and programmatic interests,~~  
21 ~~including provisions to pay only after deliverables have been~~  
22 ~~tested and accepted.~~

23 ~~89734. To ensure that the university uses recommended~~  
24 ~~practices in its future procurements, the trustees shall do all of the~~  
25 ~~following:~~

26 ~~(a) Use the procurement process appropriate to the~~  
27 ~~procurement objective. If the procurement objectives change~~  
28 ~~during the process, the trustees shall restart the procurement, using~~  
29 ~~the appropriate process, or formally modify the procurement~~  
30 ~~process through appropriate written modification to potential~~  
31 ~~vendors.~~

32 ~~(b) Establish a practice of using quantitative scoring to~~  
33 ~~demonstrate clearly that it followed an objective evaluation~~  
34 ~~process to identify a best-value vendor. It shall also document the~~  
35 ~~resolution of evaluation team concerns to demonstrate that it~~  
36 ~~considered and appropriately addressed or mitigated these~~  
37 ~~concerns.~~

38 ~~(c) Enforce its policy that prohibits the use of sole-source~~  
39 ~~contracts when multiple vendors or consultants are available to~~  
40 ~~provide the goods or services.~~



~~(d) Establish a policy to require the solicitation of at least three offers for its prequalified vendor goods and consultant services master agreements.~~

89734.1. (a) The trustees shall hire an independent oversight consultant to perform various quality assurance functions and to evaluate the progress of information technology projects.

(b) The trustees shall provide quarterly cost and progress reports to the Director of Finance, the Legislative Analyst's Office, and the chairs of the appropriate legislative policy and fiscal committees.

~~89734.3. Notwithstanding any other provision of law, the trustees shall establish an incompatible activities standard in accordance with Section 19990 of the Government Code.~~

~~89734.5. To ensure that it adequately addresses potential conflicts of interest and prohibited uses of nonpublic information, the university shall accomplish all of the following:~~

~~(a) Conduct periodic conflict-of-interest training, similar to the ethics training required under Article 12 (commencing with Section 11146) of Chapter 1 of Division 3 of Title 2 of the Government Code, for employees in decisionmaking positions where potential conflicts of interest exist. The training conducted under this subdivision shall provide employees guidance on using the eight step process of the Fair Political Practices Commission as well as their responsibility to seek the advice of counsel in appropriate situations.~~

~~(b) Require all employees to sign disclosure statements before participating in the procurement process.~~

~~(c) Enhance its disclosure form to indicate clearly what constitutes a conflict of interest, list all vendors participating in the procurement as they are known, and state that evaluators are prohibited from using nonpublic information for their personal benefit.~~

~~(d) Update its conflict-of-interest code to classify all positions responsible for evaluating or overseeing vendors or contractors.~~

~~(e) Require consultants that serve in a staff capacity, and who participate in or influence university decisions, to file Statements of Economic Interests within the meaning of Article 2 (commencing with Section 87200) of Chapter 7 of Title 9 of the Government Code, and require human resources personnel to~~



1 ~~collect, retain, and make these forms available for a seven-year~~  
2 ~~period.~~

3 ~~(f) Remind employees of the prohibition against using~~  
4 ~~information not available to the public to benefit financially, and~~  
5 ~~exercise their discretion to discipline those employees who~~  
6 ~~commit infractions.~~

7 *89734.3. To ensure that potential conflicts of interest and*  
8 *prohibited uses of nonpublic information are adequately*  
9 *addressed, the trustees shall develop guidelines to ensure*  
10 *compliance with Section 19990 of the Government Code.*

11 *89734.7. Prior to entering into a contract with any private*  
12 *vendor, the trustees shall disclose any donations to the university,*  
13 *or to any of the campuses or auxiliary organizations of the*  
14 *university, made by that vendor for up to one year before the date*  
15 *on which the contract is to be executed. The ~~chancellor~~ trustees*  
16 *shall also disclose any donations to the university, or to its*  
17 *campuses or auxiliary organizations, made by that vendor during*  
18 *the term of the contract.*

19 ~~89735. To ensure that the university continues to receive~~  
20 ~~improved service levels from data center vendors, the university~~  
21 ~~shall monitor the data center services and promptly take action to~~  
22 ~~resolve problems with the vendor, including problems in meeting~~  
23 ~~service levels or in providing and maintaining appropriate and~~  
24 ~~sufficient facilities, equipment, and staff throughout the life of the~~  
25 ~~contract.~~

26 ~~89735.3. To ensure that it provides campuses with the means~~  
27 ~~to effectively and efficiently store and retrieve the data needed for~~  
28 ~~useful management reporting, the university shall expedite~~  
29 ~~information technology data warehousing projects, and include~~  
30 ~~information technology project-related costs of campus data~~  
31 ~~warehousing in its information technology costs.~~

32 *89735.5. (a) When the university provides, by contract, for*  
33 *the creation or maintenance of electronic records containing*  
34 *personal information or confidential student information to*  
35 *accomplish a university function, consistent with its authority*  
36 *under the requirements of the Education Code and the Information*  
37 *contract. The trustees shall provide quarterly reports to the*  
38 *Secretary of State, the Director of Finance, and the Legislative*  
39 *Analyst with respect to these donations.*

1 89735.5. *In order to ensure the privacy of student and*  
2 *employee records, the university shall comply with all*  
3 *requirements of the Information Practices Act of 1977 (Chapter 1*  
4 *(commencing with Section 1798) of Title 1.8 of Part 4 of Division*  
5 *3 of the Civil Code), with respect to persons involved in the design,*  
6 *development, operation, disclosure, or maintenance of*  
7 *electronically stored personnel records or confidential student*  
8 *records, as well as with respect to any contractor and any employee*  
9 *of a contractor with access to this information. ~~shall be considered,~~*  
10 *for the purposes of this article, to be an employee of the university.*

11 ~~(b) The university shall establish rules of conduct for persons~~  
12 ~~involved in the design, development, operation, disclosure, or~~  
13 ~~maintenance of electronically stored personnel records or~~  
14 ~~confidential student records. The university shall instruct each of~~  
15 ~~these persons with respect to these rules and the requirements of~~  
16 ~~the Education Code and the Information Practices Act of 1977,~~  
17 ~~including any other regulations adopted pursuant thereto, and the~~  
18 ~~remedies and penalties for noncompliance with these rules or~~  
19 ~~regulations.~~

20 ~~(c) The university shall establish appropriate and reasonable~~  
21 ~~administrative, technical, electronic, and physical safeguards to~~  
22 ~~ensure compliance with the pertinent security and confidentiality~~  
23 ~~requirements of the Education Code and the Information Practices~~  
24 ~~Act of 1977, and to electronically, technically, and physically~~  
25 ~~protect against anticipated threats or hazards to their security or~~  
26 ~~integrity that could result in any injury.~~

27 ~~(d) The trustees shall designate a management employee to be~~  
28 ~~responsible for ensuring that the university complies with all the~~  
29 ~~provisions of the Education Code and the Information Practices~~  
30 ~~Act of 1977 relating to the security of confidential personnel~~  
31 ~~information and confidential student information.~~

32 ~~(e) The university shall not disclose any personnel information~~  
33 ~~or confidential student information in a manner that would link the~~  
34 ~~information to the person to whom it pertains, unless that~~  
35 ~~disclosure is made pursuant to Section 1798.24 of the Civil Code.~~

36 ~~(f) The university shall keep an accurate accounting of the date,~~  
37 ~~nature, and purpose of each disclosure of personnel information~~  
38 ~~and confidential student information and the name of the agency~~  
39 ~~or individual to whom the disclosure was made. This accounting~~

1 ~~shall be maintained for as long as the confidential record is~~  
2 ~~maintained.~~

3 SEC. 3. Section 10295 of the Public Contract Code is  
4 amended to read:

5 10295. (a) All contracts entered into by any state agency for  
6 (1) the acquisition of goods or elementary school textbooks, (2)  
7 services, whether or not the services involve the furnishing or use  
8 of goods or are performed by an independent contractor, (3) the  
9 construction, alteration, improvement, repair, or maintenance of  
10 property, real or personal, or (4) the performance of work or  
11 services by the state agency for or in cooperation with any person,  
12 or public body, are void unless and until approved by the  
13 department. Every contract shall be transmitted with all papers,  
14 estimates, and recommendations concerning it to the department  
15 and, if approved by the department, shall be effective from the date  
16 of the approval.

17 (b) This section applies to any state agency that by general or  
18 specific statute is expressly or impliedly authorized to enter into  
19 transactions referred to in this section.

20 (c) This section does not apply to any of the following:

21 (1) (A) Any transaction entered into by the Board of  
22 Governors of the California Community Colleges, or by a  
23 department under the State Contract Act .

24 (B) Any transaction entered into by the Trustees of the  
25 California State University, or by a department under the  
26 California State University Contract Act, with the exception of  
27 transactions relating to information technology projects within the  
28 scope of Article 3 (commencing with Section 89730) of Chapter  
29 6 of Part 55 of the Education Code.

30 (2) Any contract of a type specifically mentioned and  
31 authorized to be entered into by the Department of Transportation  
32 under Section 14035 or 14035.5 of the Government Code,  
33 Sections 99316 to 99319, inclusive, of the Public Utilities Code,  
34 or the Streets and Highways Code.

35 (3) Any contract entered into by the Department of  
36 Transportation that is not funded by money derived by state tax  
37 sources but, rather, is funded by money derived from federal or  
38 local tax sources.

1 (4) Any contract entered into by the Department of Personnel  
2 Administration for state employee benefits, occupational health  
3 and safety, training services, or combination thereof.

4 (5) Any contract entered into by the Legislature.

5 (6) Any contract entered into under the authority of Chapter 4  
6 (commencing with Section 11770) of Part 3 of Division 2 of the  
7 Insurance Code.

8 SEC. 4. Section 10430 of the Public Contract Code, as  
9 amended by Section 1 of Chapter 1122 of the Statutes of 2002, is  
10 amended to read:

11 10430. This chapter does not apply to any of the following:

12 (a) (1) The Regents of the University of California .

13 (2) The Trustees of the California State University, with the  
14 exception of Section 10365.5, Article 8 (commencing with  
15 Section 10410), Article 9 (commencing with Section 10420), and  
16 transactions relating to information technology projects within the  
17 scope of Article 3 (commencing with Section 89730) of Chapter  
18 6 of Part 55 of the Education Code.

19 (b) (1) Transactions covered under Chapter 3 (commencing  
20 with Section 12100), except that Sections 10365.5, 10410, and  
21 10411 shall apply to all transactions under that chapter.

22 (2) Notwithstanding paragraph (1), Section 10365.5 shall not  
23 apply to incidental advice or suggestions made outside of the scope  
24 of a consulting services contract.

25 (c) Except as otherwise provided in this chapter, any entity  
26 exempted from Section 10295. However, the Board of Governors  
27 of the California Community Colleges shall be governed by this  
28 chapter, except as provided in Sections 10295, 10335, and 10389.

29 (d) Transactions covered under Chapter 10 (commencing with  
30 Section 4525) of Division 5 of Title 1 of the Government Code.

31 (e) Except as provided for in subdivision (c), members of  
32 boards or commissions who receive no payment other than  
33 payment for each meeting of the board or commission, payment  
34 for preparatory time, and payment for per diem.

35 (f) The emergency purchase of protective vests for correctional  
36 peace officers whose duties require routine contact with state  
37 prison inmates. This subdivision shall remain operative only until  
38 January 1, 1987.

39 (g) Spouses of state officers or employees and individuals and  
40 entities that employ spouses of state officers and employees, that

are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

*SEC. 5. Section 12100.5 of the Public Contract Code is amended to read:*

12100.5. (a) The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges shall not be subject to this chapter except ~~that the~~ *as provided in subdivision (b).*

(b) (1) ~~The trustees shall develop policies and procedures maintained in its state university administrative manual and the board shall adopt policies and procedures maintained in its administrative manual in the State University Administrative Manual that further the legislative policies for contracting expressed in this chapter but without the involvement of in conjunction with the Director of Finance and the Director of General Services or the Department of Finance and the Department of General Services.~~

(2) *The board of governors shall adopt policies and procedures in its administrative manual that further the legislative policies for contracting expressed in this chapter, but without the involvement of the Director of Finance and the Director of General Services or the Department of Finance and the Department of General Services.*